

### **REMARKS**

Claims 1-42 are currently pending in the application. No amendments have been made, because Applicants believe that claims 1-42 contain allowable subject matter. Reconsideration and withdrawal of all pending objections and rejections in view of the following remarks is respectfully requested.

### **REJECTION IS MOOT**

Applicants submit the Examiner's rejection of claims 1-42 under 35 U.S.C. § 103(a) as being unpatentable over CHLAN in view of ADDANTE is moot in view of Applicant's affidavit for the Declaration under 37 C.F.R. § 1.131. Presently, Applicants submit the Declaration meets all the requirements under 37 C.F.R. § 1.131, 37 C.F.R. § 1.47 and MPEP 715.04, and thus is effective to antedate the ADDANTE reference.

#### **1. Proper Execution**

The Examiner asserts the Declaration filed on May 9, 2005 was ineffective to overcome the ADDANTE reference (U.S. Patent Application Publication No. US 2002/0004733 A1), since all ten of the inventors signatures were not present. Applicants respectfully traverse the Examiner's assertions.

Applicants acknowledged in their May 9, 2005 Response that the inventor Mr. Bob Kip Hansen was unavailable to execute the Rule 131 Declaration. Therefore, concurrently herewith, Applicants submit a copy of the executed page of the Declaration forwarded from Mr. Hansen attached to a copy of the declaration, which is the same Declaration forwarded to Mr. Hansen for execution. Accordingly, Applicants submit that all ten inventors have

now signed the Declaration, and that the Declaration is sufficient to overcome the pending rejections over the art of record.

## **2. Due Diligence**

The Examiner asserts the Declaration under 37 C.F.R. § 1.131 filed on May 9, 2005 lacks due diligence, since Applicants have not provided sufficient activity from May 5, 2000 to July 27, 2000, and thus is ineffective to overcome the Addante reference. Applicants respectfully traverse the Examiner's assertions.

The diligence at issue is that of the outside counsel from before May 5, 2000 to prepare the application for review and execution by inventors for filing in the U.S. Patent and Trademark Office on August 18, 2000.

According to M.P.E.P. 2138.06 only ***reasonable*** diligence is required by the patent attorney. Further, the MPEP provides that a patent attorney will be held to have exercised reasonable diligence if the attorney worked reasonably hard on the application during the critical period, taking into consideration any backlog of unrelated cases the attorney may have had and his completion of those cases along with the present application in chronological order, which was attested to in the Declaration.

While believing the Declaration is factually sufficient, Applicants note that during the period in question, a series of emails were exchanged between outside counsel Mr. John J. Timar of Womble Carlyle Sandridge & Rice and IBM patent attorney Stephen Tryran on May 16 and 18, 2000 to discuss the invention.

Applicants also submit Mr. Timar conducted a telephone conference with the inventors on June 1, 2000 and July 13, 2000 to discuss the subject matter of the invention and the application.

Further, Mr. Timar conducted numerous telephone interviews to further clarify the subject matter of the invention for preparing and finalizing the application for filing. These telephone interviews took place on July 11, 14 and 24, 2000.

Mr. Timar forwarded the draft application to IBM on July 30, 2000 for review and execution by the inventors. In this regard, it is noted that ten inventors living in various parts of the U.S. and the world were named in the application, and that review by each inventor was sought prior to filing.

To review, Applicants note that during prosecution of this application numerous discussions between the inventors and counsel were required until a draft of the application was forwarded to the inventors. During the course of drafting the application, numerous communications between the outside counsel and IBM attorneys and inventors took place.

Therefore, Applicants submit that the above identified facts support the inventors statement in the Declaration that reasonable diligence by the patent attorney was exercised from prior to May 5, 2000 to the U.S. filing date of August 8, 2000.

Thus, Applicants respectfully request that the Examiner reconsider and withdraw the rejections of the claims 1-42.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance.

Serial No.: 09/641,495  
Attorney Docket No.: P26903 A04.DOC

The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to IBM Deposit Account No. 09-0547 (Endicott).

Respectfully submitted,  
Paul Roger BRISCOE, *et al.*

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', written over a horizontal line.

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